

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR LAERZIO,

Defendant-Appellant.

UNPUBLISHED

April 23, 1999

No. 206877

Macomb Circuit Court

LC No. 96-003016 FH

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Following a two-day jury trial, defendant was convicted of fraudulently obtaining a controlled substance, Vicodin, by false prescription, MCL 333.7407(1)(c); MSA 14.15(7407)(1)(c). As an habitual offender, fourth offense, defendant was subject to enhanced penalty pursuant to MCL 769.12(1)(b); MSA 28.1084(1)(b), and was sentenced to four to fifteen years' imprisonment. Defendant appeals his conviction and sentence as of right. We affirm.

On appeal, defendant first argues that the evidence was insufficient to support his conviction. In reviewing the sufficiency of the evidence in a criminal case, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997).

To support a conviction for fraudulently obtaining a controlled substance by false prescription, the prosecutor must prove that (1) the substance in question was a controlled substance, (2) the defendant knowingly or intentionally obtained possession of a controlled substance, (3) the defendant obtained the controlled substance by false prescription, and (4) the defendant knew the prescription was false. MCL 333.7407(1)(c); MSA 14.15(7407)(1)(c). Circumstantial evidence and reasonable inferences drawn therefrom may constitute satisfactory proof of the elements of the offense. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

In the present case, the evidence established that defendant arrived at Bloch Drugs to pick up a prescription for Vicodin for a "Karen Muller" approximately one hour after a male impersonating "Dr.

Weisenberger” had called in the prescription. The pharmacist testified that the substance he used to fill the prescription was Vicodin, a schedule three controlled substance. Defendant paid for the prescription and left the store in a hurry. When the police approached defendant outside the drugstore, he gave them a false name. Although he was heading toward a Ford vehicle parked in front of the drug store, he denied that it was his and told the police that he had been driven to the store by a white, heavy-set female in a blue station wagon, that the prescription was for her, and that she was waiting in the parking lot. When the police could not locate the white female in a blue station wagon, one deputy used the set of car keys he found in defendant’s possession to unlock and start the Ford vehicle that defendant was walking toward when they arrived. The vehicle was registered to an individual at defendant’s address.

Viewing the evidence in a light most favorable to the prosecution, we find that there was sufficient evidence to permit a rational trier of fact to conclude that the substance in question, Vicodin, was a controlled substance and to infer that defendant knowingly or intentionally obtained possession of the controlled substance and knew that the prescription was false.

Defendant also contends that the trial court abused its discretion in imposing a disproportionate sentence which exceeded the recommended guidelines’ range. Because defendant was sentenced as an habitual offender, the sentencing guidelines do not apply. *People v Cervantes*, 448 Mich 620, 625-626; 532 NW2d 831 (1995); *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996), and may not be considered on appeal in determining the appropriate sentence. *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). Our review is limited to whether the trial court abused its discretion in imposing defendant’s sentence. *People v Elliott*, 215 Mich App 259, 261; 544 NW2d 748 (1996). A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635; 461 NW2d 1 (1990).

After a thorough review, we conclude that the trial court did not abuse its discretion. Defendant committed the instant offense, his twelfth drug-related offense while he was on parole for another offense. The sentence imposed appropriately reflects defendant’s extensive criminal history, his apparent inability to reform his behavior, and his willingness to utilize drastic means to satisfy his habit. See *People v Hansford (After Remand)*, 454 Mich 320, 325; 562 NW2d 460 (1997). The sentence does not exceed that which has been authorized by our Legislature for an habitual offender, fourth offense. MCL 769.12(1)(b); MSA 28.1084(1)(b); *Id.* at 326. Accordingly, we find that the trial court did not abuse its sentencing discretion.

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Kelly
/s/ Harold Hood